

1 Pamela M. Egan, WSBA No. 54736 (*pro hac vice*)
2 POTOMAC LAW GROUP PLLC
3 1300 Pennsylvania Ave. NW, Suite 700
4 Washington, DC 20004
5 Telephone: (415) 297-0132
6 Facsimile: (202) 318-7707
7 Email: pegan@potomaclaw.com

8 *Attorneys for Mark D. Waldron, Chapter 11 Trustee*

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 In re:

13 GIGA WATT, Inc., a Washington
14 corporation,

15 Debtor.

16 Case No. 18-03197 FPC 11

17 The Honorable Frederick P. Corbit

18 **DECLARATION OF MARK D.
19 WALDRON IN SUPPORT OF
20 TRUSTEE'S MOTION FOR ORDER
21 SETTING MONTHLY INTERIM
22 PAYMENT PROCEDURE**

23 I, Mark D. Waldron, declare as follows:

24 1. I submit this declaration in my capacity as the duly appointed

25 Chapter 11 Trustee (the “Trustee”) in the bankruptcy case of the above-captioned
1 debtor (the “Debtor” or “Giga Watt”) and in support of the *Trustee’s Motion for*
2 *Order Setting Monthly Interim Payment Procedure* (the “Motion”), filed herewith.

3 The statements set forth herein are based on my investigation of the Debtor’s
4 affairs, which is ongoing, and, except where otherwise noted, are based on
5 personal knowledge. If called as a witness, I would and could competently testify
6 thereto. Unless otherwise defined herein, capitalized terms have the meanings

7 **DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE’S
8 MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
9 PROCEDURE - Page 1**

10 4810-4409-9753, v. 3

1 ascribed to them in *the Memorandum of Points and Authorities in Support of the*
2 *Trustee's Motion for Order Setting Monthly Interim Payment Procedure*, filed
3 herewith.

4 2. Pursuant to the Motion, I am requesting permission to cause the
5 Debtor to pay my fees on a monthly basis up to \$15,000 per month and to
6 reimburse my expenses on a monthly basis subject to the procedure (the "Monthly
7 Interim Payment Procedure") set forth in the Motion.

8 3. Each month, I will file and serve, as set forth below, a notice stating
9 the amount of fees and expenses that I accrued in the calendar month prior (the
10 "Notice of Monthly Interim Fee Statement").

11 4. I will file and serve the Notice of Monthly Interim Fee Statement
12 upon all parties who have registered to participate in Electronic Court Filing (the
13 "Monthly Notice Parties").

14 5. The Monthly Notice Parties will have ten (10) days from the date of
15 service of the Notice of Interim Fee Statement to file and serve upon my counsel
16 and me an objection to the proposed fees.

17 6. If no timely objection is filed with the Court, then I may cause the
18 Debtor to pay me up to the sum of \$15,000 for fees plus expenses incurred;
19 provided that if monthly fees are less than \$15,000, then I will cause the Debtor to
20 pay actual fees plus expenses.

21 7. I shall use my business judgment in deciding whether to cause the
22 Debtor to pay any portion of the monthly interim payments. If I decide in the

23 DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE'S
24 MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
25 PROCEDURE - Page 2
4810-4409-9753, v. 3

1 exercise of my business judgment that the Debtor should not pay otherwise
2 properly noticed fees, that unpaid interim allowed amount will roll forward and
3 will be payable at such time as I deem appropriate. Furthermore, payment of the
4 rolled forward amount will not count toward the \$15,000 cap.

5 8. If a timely objection is filed with the Court and served upon the
6 Trustee and undersigned counsel, then I will set the matter for hearing, which may
7 be on an expedited basis.

8 9. If a party objects to less than the full amount of the requested fees or
9 expenses set forth in the Notice of Monthly Interim Fee Statement, then I may
10 cause the Debtor to pay me the amount of fees to which there is no objection up to
11 the sum of \$15,000 plus expenses.

12 10. All fees and expenses will be subject to final review and approval
13 after notice and hearing pursuant to section 330 of title 11 of the United States
14 Code.

15 11. I shall will disgorge any fees and expenses that have been paid
16 pursuant to the Monthly Interim Payment Procedure but that are not allowed on a
17 final basis.

18 12. By separate application, I have asked for interim approval of
19 \$95,244.26 in fees and for approval of reimbursement of \$5,235.80 in expenses
20 for the period January 2019 through September 2019. *See Application for Award*
21 *of Compensation for Service Rendered and Reimbursement of Expenses Pursuant*
22 *to 11 U.S.C. § 330, and for Approval of the Payment of Bank Fees* [ECF 384]. If

23 DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE'S
24 MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
25 PROCEDURE - Page 3
4810-4409-9753, v. 3

1 approved, I will cause the Debtor to pay fees and expenses set forth in the
2 Application only to the extent that I believe it is financially prudent to do so.

3 13. Since my appointment, I have filed Monthly Operating Reports
4 which contain detailed information regarding the Debtor's post-petition revenues.
5 Those Monthly Operating Reports are listed in the Memorandum of Points and
6 Authorities filed herewith. In summary, the Moses Lake Facility generated
7 approximately \$400,000 in gross revenues in each of June, July and August 2019.
8 All current obligations are being met on a timely basis. I have fully re-paid the
9 loan made by the Moses Lake Landlords. I have also caused the Debtor to pay
10 more than \$1.5 million in past due and current administrative rent. Currently,
11 approximately \$51,000 in past due administrative rent remains due and owing to
12 the Moses Lake Landlords. The revenue-sharing obligation to the Moses Lake
13 Landlords will end when the past due administrative rent is paid in full.

14 14. I have recently re-opened the TNT Facility.

15 15. I have distributed \$1,943,163.27 since my appointment through
16 September 30, 2109. Fees accrued since my appointment on January 23, 2019,
17 through September 2019 total \$95,244.26 as set forth more specifically in the
18 Application. For the same period, expenses total \$5,235.80. Based on
19 disbursements from May through September 2019, the average disbursements are

20
21
22
23 DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE'S
24 MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
PROCEDURE - Page 4

25 4810-4409-9753, v. 3

1 \$432,304.34 per month.¹ Based on the foregoing, the Trustee fee of 3% would be
2 \$12,969.13 per month.

3 16. Based on the claims registry, this case has 403 creditors with claims
4 totaling \$110,141,374.11. When I took over, post-petition revenues were
5 unaccounted for and operations were defunct. My team and I have succeeded in
6 (1) re-opening the Moses Lake Facility, (2) obtaining a preliminary injunction to
7 assert the Trustee's authority to re-open the TNT Facility for the benefit of
8 creditors, and (3) re-opening the TNT Facility. He is currently rationalizing
9 operations and analyzing plan options.

10 17. In addition to active reorganization efforts, I am litigating with the
11 Debtor's former CEO and investigating the unregistered securities offering that
12 the Debtor conducted in 2017.

13 18. I have not been paid since my appointment nine months ago. I am a
14 sole practitioner. My office has paid \$5,235.80 in expenses on behalf of the estate.
15 I have also devoted significant time and energy to my successful efforts in this
16 case to date. It would work a hardship on me to have to continue to work and
17 advance expenses without monthly payment and to have to devote limited
18 resources to filing an interim fee application every four (4) months.

19 19. I am financially able to disgorge any fees paid or expenses
20 reimbursed pursuant to the Monthly Interim Payment Procedure.

21 _____
22 ¹ Disbursements for the months of January through April 2019 are not included in
23 the average because there were no operations during that time.

24 DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE'S
MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
PROCEDURE - Page 5

25 4810-4409-9753, v. 3

1 20. Notice of the Motion will be served upon: (i) the Office of the United
2 States Trustee for the Eastern District of Washington; (ii) the Official Committee
3 of Unsecured Creditors, (iii) the Public Utility District No. 1 of Douglas County,
4 Washington; (iv) TNT Business Complex, LLC, the landlord at the TNT Facility;
5 (v) Giga Plex LLC and MLDC I LLC, the landlords of the Moses Lake Facility;
6 (vi) David M. Carlson and his counsel; (vii) Randy Michelson, the post-petition
7 lender; (viii) the Master Mailing List maintained by the Court, and (ix) parties that
8 have filed with the Court requests for notice of all matters in accordance with Rule
9 2002 of the Federal Rules of Bankruptcy Procedure and LBR 2002-1(b).

10 21. In addition to serving the entire creditor matrix with this Motion,
11 each month I will serve a Notice of Monthly Interim Fee Statement upon the
12 Monthly Notice Parties, as set forth above. Finally, a final fee application
13 providing another opportunity to review fees will be served upon the entire
14 creditor matrix.

15 To the best of my knowledge, I declare under penalty of perjury that
16 foregoing is true and correct.

17 Executed this 9th day of October 2019 in Tacoma, Washington



Mark D. Waldron

23 DECLARATION OF MARK D. WALDRON IN SUPPORT OF TRUSTEE'S
24 MOTION FOR ORDER SETTING MONTHLY INTERIM PAYMENT
PROCEDURE - Page 6